

WESTERN TELE-COMMUNICATIONS, INC.

IBLA 90-479

Decided October 12, 1993

Appeal from a decision of the Sonoma-Gerlach Resource Area Office, Winnemucca, Nevada, Bureau of Land Management, increasing annual rental for right-of-way N-39392.

Set aside and remanded.

1. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Generally--Rights of Way: Appraisals

An increase in the annual rental charge for a communications site right-of-way will be set aside if the record fails to demonstrate any relationship between the right-of-way subject to appraisal and a BLM master appraisal determining the market value of a "typical" BLM right-of-way, and there is no indication that the comparable factors at the communications site at issue matched the comparable factors considered in BLM's appraisal of a "typical" right-of-way.

APPEARANCES: John A. Dahl, Leasing Agent, Western Tele-Communications, Inc., Englewood, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Western Tele-Communications, Inc. (Western), has appealed from a June 29, 1990, decision of the Area Manager, Sonoma-Gerlach Resource Area Office, Winnemucca, Nevada, Bureau of Land Management (BLM), determining the annual rental for communications site right-of-way N-39392.

Right-of-way N-39392 was granted to Western on July 24, 1984, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1988). The grant embraces 2.3 acres for the Lone Mountain communications site, access road, and buried powerline on Trinity Peak near Unionville, Nevada. The record does not identify other users at the Lone Mountain communications site.

Under the terms of the 30-year grant, Western agreed to pay rental based on the fair market value of the uses authorized by the grant. The subject land was first appraised by BLM on December 3, 1984. The resulting site-specific appraisal report for N-39392 was approved on March 5,

1985, and the annual rental for this right-of-way was set at \$1,200. Western paid this amount in May 1985 and annually thereafter through the lease year beginning July 24, 1989.

On September 8, 1989, BLM completed and approved a master appraisal for common carrier microwave telecommunications facilities in Nevada. The decision of the Sonoma-Gerlach Resource Area Manager was based on the recommendation contained in a June 29, 1990, memorandum from a BLM Realty Specialist. The memorandum states in relevant part:

I have examined the case file and/or site and in my opinion the above meets the criteria defined in the Master Appraisal Report dated and approved September 8, 1989, for the facility use specified above.

The site described is located in a rural area serving local communities that are generally small and dispersed. Development costs for access and power are not unreasonable and these costs can be amortized within a fairly short period, usually the first five-years of the grant. It has been determined that Western Telecommunications, Inc., is a chargeable primary user. The Holder is not under a shared space arrangement as outlined in the Supplement to the Master Appraisal Report.

Western Tele-communications, Inc., provides a communication service network of transmitters and receivers between Reno, NV, and Salt Lake City, UT. The microwave radio relay station is needed "for free enterprise competition resulting in low cost of long distance telephone service to public" linking Virginia Peak to Rocky Point, a distance of 316.2 miles. The R/W includes the 200' x 200' site (0.92 acre), access road (0.22 acre), and buried powerline (1.17 acres), located in T. 28 N., R. 34 E., Sec. 4, Lots 7, 8, 10, 11, 12, Mount Diablo Meridian, Nevada.

An appraisal was completed and approved March 5, 1985, establishing rental annually, commencing July 24, 1984. Rent has been paid to July 23, 1990.

In accordance with federal regulations in 43 CFR 2800, the right-of-way is subject to periodic review. It has been reviewed prior to the next rental due date of July 24, 1990.

On September 8, 1989, a Master Appraisal Report for Common Carrier Microwave facility sites was completed and approved. This appraisal provides the fair market rental rate that will be charged for all such typical facilities in rural Nevada is \$2,500.

Based upon the Master Appraisal Report, the annual fair market rent is determined to be \$2,500 per year.

The area manager issued his decision informing Western that, "[b]ased upon the Master Appraisal Report, the annual fair market rent is determined to

be \$2,500 per year." Western was billed \$1,042 for the period from July 24, 1990, through December 31, 1990, to adjust the billing cycle to coincide with the calendar year, in accordance with 43 CFR 2803.1-2(a), and was advised that it would be billed annually prior to January 1 thereafter. While no copy of the "Reviewer's Appraisal Analysis" or the "Reviewer's Determination" were included with the decision, they were subsequently furnished to Western.

In its statement of reasons, Western alleged "errors in BLM's appraisal and site value." It challenged the selection of comparable lease sites used to determine the fair market value and offered additional transactions not considered by BLM which it argues were more comparable to its site. Prior to explaining why those sites were excluded from consideration, BLM stated:

It should be pointed out that the appraisal prepared by BLM was not written specifically for the WTCI site on Lone Mountain, but was intended to value the "typical" common carrier microwave site found on BLM lands in Nevada. Comparables were presented which would represent nearly all types of rural sites and the site rental recommended would, more or less, be the "middle of the road" price for a site exhibiting "middle of the road" characteristics. Sites clearly outside the parameters set forth in the Master Appraisal could be adjusted within the value range of the report or recommended for individual site specific appraisal.

BLM then discussed other leases held by appellant on public and private lands having a higher rental fee. However, apart from the conclusory report found in the memorandum from the realty specialist, there is no analysis of site characteristics which would affect rental value in the record. 1/

[1] Under section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1988), a holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal. The comparable lease method is the preferred method for appraising non-linear rights-of-way, including communications sites, if sufficient comparable data exists and appropriate adjustments are made to compensate for the differences between the subject site and other leased sites. Voice Ministries of Farmington, 124 IBLA 358, 359 n.1 (1992); Oregon Broadcasting Co., 119 IBLA 241, 243 (1991), and cases cited.

Regarding BLM's attempt to combine this comparable lease method with a master appraisal approach, the Board observed in Confidential Communications Co., 126 IBLA 349, 351 (1993):

1/ The review analysis and determination, in the record is the one for the Master Appraisal, not Western's right-of-way. The comparables used in the Master Appraisal to determine fair market value focused on comparative factors used to establish the "typical" site, e.g., location, site access, power access, parcel size.

In appraisal cases where BLM attempts to implement the comparable use method by using a master appraisal, the Board review seeks to determine whether the right-of-way subject to appraisal actually conforms to the typical right-of-way. Union Pacific Railroad Co., 114 IBLA 399, 403 (1990). It is not proper for BLM to apply a master appraisal across the board without making a thorough comparison of various factors considered for the "typical" site. As we observed in that case, to enable the Board or an appellant to verify the comparability between private leases with either the typical BLM right-of-way or the particular right-of-way subject to appraisal, it was important that the record contain the necessary information. At a minimum, the case record must demonstrate that BLM related the typical BLM right-of-way to the subject right-of-way. The subject right-of-way should match the typical BLM right-of-way with respect to all the factors determinative of rental value, in order to bring the appraisal within the ambit of the comparable lease method of appraisal. Id. at 404-05. To the extent that it does not match that site, adjustments should be made in the amount of rental due. In the absence of such, BLM's appraisal cannot be affirmed.

In this case we find very little evidence that the appraiser considered the extent the Lone Mountain communications site fits the profile of BLM's "typical" Nevada "common carrier microwave" telecommunications site on which the \$2,500 annual rental is based. See id.; High Country Communications, 105 IBLA 14, 17 (1988). Since the appraisal does not demonstrate how right-of-way N-39392 is comparable to BLM's typical Nevada "common carrier microwave" telecommunications site, BLM's decision establishing rental based on that appraisal must be set aside. On remand, BLM should undertake the analysis required by Union Pacific Railroad Co., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further consideration consistent with this opinion.

Gail M. Frazier
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge